IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 25531 of 2007(M)

PETITIONER:

1. ANNA, T.J. JUNIOR PUBLIC HEALTH NURSE,
   GRADE II, C H S CENTRE, IRITTY.

2. NISHAKUMARI.L.JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC A JANOOR, KASARAGOD DIST.

3. LISSY GOERGE,JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC, NADAVIL,TALIPARAMBA KANNUR.

4. BINDU.K.P.JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC,CHAPPARA KADAVU,
   TALIPARAMBA KANNUR.

5. PADMINI.P.R.JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC KURUMALKOOR, TALIPARAMBA.

6. PATHUMA.K..JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC ALAKKODE, MANAKKADAVU, KANNUR.

7. SAVITHA.M.K.JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC MUTTOM, POST VENGARA.

8. SREELEKHA.K.U,JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC PADANAM,KASARAGODE.

9. SHYLAJA,JUNIOR PUBLIC HEALTH NURSE
   GRADE II,PHSC UDAMPANTHALA, WYNAD.

10. ANITHA,JUNIOR PUBLIC HEALTH NURSE
    GRADE II,PHSC ETTIKULA, KASARAGOD DIST.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
   SECRETARY TO GOVERNMENT, DEPATMENT
   HEALTH AND FAMILY WELFARE, THIRUVANANTHAPURAM.

2. DIRECTOR OF HEALTH SERVICE,THIRUVANANTHAPURAM.

3. DISTRICT MEDICAL OFFICER, HEALTH, KANNUR.

BY GOVT.PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P.(C) NO.25531 of 2007

Dated this the 12th day of September, 2007

JUDGMENT

The petitioners, who are now in regular service as Junior Public Health Nurse Grade II, approached the Government for regularising their earlier provisional service. Reliance, in this regard, was made to the order (Ext.P1) passed by the Government. Government rejected the request under Ext.P2 expressing their inability to consider the request of the petitioners to count their respective periods of provisional service as regular service. Petitioners challenged Ext.P2. They also seek a direction to the Government to pass an order similar to Ext.P2.

2. I have heard the learned counsel for the petitioner Mr.Vijayakumar as also the learned Government Pleader.

3. Ext.P1 order was passed by the Government in exercise of the powers under Rule 39 of the Part II of the KS&SSR regularising the provisional services of 17 applicants, in the light of the direction given by the Supreme Court. The directions of the Supreme Court is extracted in Ext.P1.

> **"In the special features of these cases we think it would be proper for the respondents to extend the benefit of the order given by this Court in W.P.(C) No.493/91 in the order made in 9.5.1995 in as much as all qualified for the post of Junior Public Health Nurse. This order shall not be treated as precedent to be applicable to others. In the event that services of any**

of the candidates/petitioners have been terminated during the pendency of the proceedings before this Court, though no salary need be paid to them for that period they shall be given benefit of continuity of service in the matter of regularisation. The civil appeals are allowed accordingly. There shall be no order as to costs".

4. Apparently, the Supreme Court cautioned the Government that the direction issued in Civil Appeal No.4127/2001 and connected cases should not be treated as a precedent, entitling similarly situated persons for a similar benefit as such. It cannot be said that the Government has committed an error in taking note of the said caveat sounded by the Supreme Court while passing Ext.P2 order.

5. If, therefore, the Supreme Court has made it clear that the directions issued thereunder shall not be treated as a precedent applicable to others, the Government cannot be faulted with for declining to regularising services of the petitioners. The Government cannot be compelled to relax the rules in exercise of the powers under Rule 39 of Part II of KS & SSR . In my view, the writ petition is bereft of merit. The same is dismissed.

V.GIRI, JUDGE

cs

: :

: :